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10/801,520	03/16/2004	Elizabeth A. Mazzio		3209
7590	12/02/2004			
Elizabeth A. Mazzio 982 West Brevard Street, D #22 Tallahassee, FL 32304				
EXAMINER FLOOD, MICHELE C				
ART UNIT		PAPER NUMBER		
1654				

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/801,520

**Applicant(s)**

MAZZIO ET AL.

**Examiner**

Michele Flood

**Art Unit**

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on September 14, 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>3/04</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION\**

### ***Election/Restrictions***

Applicant's election without traverse of Group I, Claims 1-16, in the reply filed on September 14, 2004 is acknowledged. Claims 17-21 have been withdrawn from further consideration as a group drawn to a non-elected invention.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The metes and bounds of Claims 2-13 are rendered uncertain because the percentage amounts of the ingredients are not set forth in terms of either "by weight" or "by volume" percentage amount of the total composition. The lack of clarity renders the claims indefinite since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

The metes and bounds of Claim 10 are rendered vague and indefinite by the phrase "wherein said propolis can be substituted for garlic" because it is uncertain as to what is the purpose for the substitution of one ingredient for the other since it is unclear

as to what functional effect the instantly claimed ingredients exert. The lack of clarity renders the claim ambiguous.

The metes and bounds of Claim 12 are made uncertain by "chemical derivatives of niacin" because it is unclear as to what constitutes "chemical derivatives of niacin" or how closely related the derivatives must be to be considered "chemical derivative of niacin".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 7, 11 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Burachevskii et al. (N).

Applicant claims a topical skin composition comprising a safe and effective amount of: a) one or more active ingredients selected from the group consisting of wormwood (species *Artemisia absinthium* or genus *Artemisia*), black walnut (*Juglans nigra* or genus *Juglans*), niacin (niacinamide, nicotinic acid and chemical derivatives of niacin); b) Aloe vera or a dermatologic ally acceptable carrier; c) one or more active ingredients selected from the group consisting of garlic (*Allium sativum* or genus *Allium*), tumeric (*Curcuma longa* or genus *Curcuma*), propolis, St. John's wort (*Hypericum perforatum* or genus *Hypericum*), licorice (*Glycyrrhiza glabra* or genus

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Glycyrrhiza), chamomile (Matricaria chamomile or genus Matricaria or genus Artemesia) and herbal anti-bacterial agents. Applicant further claims a topical skin care composition according to claim 1, wherein said wormwood is further comprised of an extract derived from the species Artemisia absinthium or any plant from the genus Artemisia, and constitutes about 9% and between 0.5%-90% by weight; wherein said St. John's wort is further comprised of an extract derived from the species Hypericum perforatum, and constitutes about 3% and between 0.5% to 25% by weight; and, wherein said propolis can be substituted for garlic and constitutes about 10% and between 0.75 to 70% by weight.

Burachevskii teaches a balsam comprising 0.5% wormwood, 59.5-60.5% propolis, 5% St. John's wort, natural honey (sugar), color, ethyl rectified alcohol, purified water. See line 12-22 of the abstract.

The reference anticipates the claimed subject matter.

Claims 1, 10 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kimura et al. (O), as evidenced by <http://www.itmonl.ine.org/arts/borneol.htm> (W) and <http://www.onelook.com/?w=moxa&ls=a> (X).

Applicant's claimed invention of claim 1 was set forth above. Applicant further claims a topical skin care composition according to claim 1, wherein said garlic further embodies a physical form of one or more selected from the group consisting of macerated, minced, dried, pulverized, powdered, deodorized and shredded.

Kimura teaches a poultice that is prepared by kneading and compounding garlic, an alcoholic solution, wormwood powder, moxa (*Artemisia*; See <http://www.itmonl.ine.org/arts/borneol.htm> (W) and <http://www.onelook.com/?w=moxa&ls=a> (X) ), egg white (binder) and wheat flour (starch).

The reference anticipates the claimed subject matter.

Claims 1-3 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Terry et al. (A).

Applicant's claimed invention of claim 1 was set forth above. Applicant further claims the topical skin care composition according to claim 1, wherein said black walnut is further comprised of an extract derived from the species *Juglans nigra* or any plant from the genus species *Juglans* and constitutes about 9% and between 0.5-90% by weight; and, wherein said herbal antibacterial agents are further comprised of extracts selected from the group consisting of clove, nutmeg, ginger, and myrrh, and constituting about 2% and between 0.5% to 25% by weight.

Terry teaches a liquid composition comprising 15-25% by weight of each of the following: black walnut, wormwood, clove (herbal antibacterial agent), orange peel and marshmallow, wherein the liquid composition is dispensed from a dropper bottle into a drink, in Column 2, lines 14-47. Terry does not teach the reference composition as a topical skin care composition. However, the liquid composition taught by Terry comprises the instantly claimed ingredients in the same amounts as instantly claimed by

Applicant. Moreover, there is no ingredient in the Terry' composition to preclude the use of the liquid composition as a skin care composition.

The reference anticipates the claimed subject matter.

Claims 1 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by <http://drclarkia.com/clarkia.asp> (U).

Applicant's claimed invention of Claim 1 was set forth above.

The above cited website address teaches a tincture comprising black walnut, wormwood (*Artemisia absinthium*) and clove (herbal antibacterial agent). Clark does not teach the reference composition as a topical skin care composition. However, the tincture taught by Clark comprises the instantly claimed ingredients in the same amounts as instantly claimed by Applicant. Moreover, there is no ingredient in the Clark' composition to preclude the use of the liquid composition as a skin care composition.

The reference anticipates the claimed subject matter.

Claims 1, 6, 12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsui et al. (P).

Applicant's claimed invention of Claim 1 was set forth above. Applicant further claims the topical skin care composition according to claim 1, wherein said licorice is further comprised of an extract derived from the species *Glycyrrhiza glabra* or any other plant from the genus *Glycyrrhiza*, and constitutes about 3% and between 0.5 to 25% by weight; and, wherein said niacin is selected from the group consisting of niacinamide,

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nicotinic acid and chemical derivatives of niacin, constituting about 1% and between 0.02 to 5% by weight.

Matsui teaches a skin care composition comprising based on the whole weight of a skin-whitening cosmetic, nicotinic acid amide preferably in an amount of 0.01-10wt.%, and an oil-soluble glycyrrhiza extract prepared by extracting Glycyrrhiza Linne var. (the common name is Russian, Afghan and Turkish liquorice, *G. glabra* L.), preferably in an amount of 0.01-1.0wt.% , a coloring pigment, (a tar pigment), an antiseptic agent (paraben), an anionic surfactant, a nonionic surfactant a cationic surfactant, an amphoteric surface active agent, a naturally occurring surfactant, pigment, and an antioxidant.

The reference anticipates the claimed subject matter.

Claims 1, 2, 4, 8, 12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Minetti (B).

Applicant's claimed invention of Claim 1 was set forth above. Applicant further claims the topical skin care composition according to claim 1, wherein said chamomile is further comprised of an extract derived from the species *Matricaria chamomile* or any plant from the genus *Matricaria* or *Anthemis*, and constitutes about 2% and between 0.5% to 25% by weight; and, wherein said Aloe vera or a dermatologically acceptable carrier constitutes about 54% and between 5-95% by weight.

Minetti teaches an aftershave lotion comprising menthol 0.1, Quaternium-26 1.0,



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chamomile extract 0.25, Aloe Vera gel 2.0, Na lactate (60%) 2.0, niacinamide 0.5, water 16.0 and alcohol 78.15 parts.

The reference anticipates the claimed subject matter.

Claims 1, 7, 12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kidena (Q).

Applicant's claimed invention of Claim 1 was set forth above. Applicant further claims the topical skin care composition according to claim 1, wherein said, St. John's wort is further comprised of an extract derived from the species *Hypericum perforatum* or any plant from the genus *Hypericum*, and constitutes about 3% and between 0.5 to 25% by weight.

Kidena teaches an antidandruff hair lotion comprising an amido compound 0.8, nicotinamide 0.1, *Hypericum erectum* extract 0.5, l-menthol 0.3, isopropylmethylphenol 0.01, stearyltrimethylammonium chloride 0.4, ethanol 50.0 and purified water to 100 weight%.

The reference anticipates the claimed subject matter.

Claims 1, 5, 12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamada et al. (R, translation of foreign patent provided herein).

Applicant's claimed invention of Claim 1 was set forth above. Applicant further claims the topical skin care composition according to claim 1, wherein said tumeric is further comprised of an extract derived from the species *Curcuma longa* or any plant

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from the genus *Curcuma*, and constitutes about 7% and between 0.5% to 90% by weight.

Hamada teaches hair tonics comprising the following ingredients: [A] 0.01%-8% of curcumin demethoxycurcumin and/or bisdemethoxycurcumin extracted from *Curcuma longa* or *C. aromatica* and [B] diisopropylaminedichloroacetate,  $\gamma$ -aminobutyric acid, hinokitiol, vitamin E derivatives, pantothenic acid derivatives, 0.01%-5% nicotinic acid derivatives, 0.01%-5% glycyrrhizic acid derivatives, 0.01%-5% glycyrrhetinic acid derivatives, ginseng extracts, red pepper extracts, tangin extracts and/or other plant extracts.

The reference anticipates the claimed subject matter.

Claims 1, 9 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Buyn (S), as evidenced by the teachings of Mabberley (V).

Applicant's claimed invention of Claim 1 was set forth above. Applicant further claims the topical skin care composition according to claim 1, wherein said Aloe vera or a dermatologically acceptable carrier constitutes about 54% and between 5-95% by weight.

Buyn teaches a composition and a method of making thereof comprising the following steps: (i) after adding loess to water, precipitating and collecting supernatant; (ii) after adding 100g of garlic, 200g of ginger, 100g of mugwort (*Artemisia spp.*), 200g of ginseng, 100g of aloe, 200g of eucommia bark leaf, 100g of

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fragrant mushroom, 100g of pine needles, steaming the mixture for 10 hours and extracting; (iii) chilling and filtering the extract; (iv) fermenting the filtrate at 19-20 for 25 days and adding pure water for dilution; (v) adding ethanol or alcohol for manufacturing lotion. See page 469 of The Plant-Book, wherein Mabberley teaches "mugwort" as *Artemisia spp*

The reference anticipates the claimed subject matter.

Claims 1, 4, 12, 14 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Scivoletto (AA1, US 6,248,763).

Applicant's claimed invention was set forth above.

In Column 3, line 60, bridging Column 4, line 13, Scivoletto teaches a topical skin care compositions in the form of a daily cleanser for face, body and scalp wash and foot bath comprising methyl nicotinate 0.01 to 20%; niacin 0.01 to 1%; *Aloe vera* gel 60 to 70%; *Chamomile* 0.01 to 0.1%; and dermatologically acceptable carriers.

The reference anticipates the claimed subject matter.

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Claim 1 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Tereshenko et al. (NN1).

Applicant's claimed invention was set forth above.

Tereshenko teaches a tincture for skin comprising wormwood herb, St. John's wort, licorice, etc.

The reference anticipates the claimed subject matter.

Claims 1, 3, 11 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Detsina et al. (OO1).

Applicant's claimed invention was set forth above.

Detsina teaches a skin cream composition comprising 0.5-2.0 %; wormwood and/or plantain; 0.5-3.0 % propolis extract; 0.01-0.1% ether oil of *Origanum* (herbal antibacterial agent); 0.5-2.0% *Bergenia* extract (herbal antibacterial agent); and pharmacologically acceptable carriers, e.g., glycerine, flavoring, water, salts, egg yolks (emulsifier) and golden pigment.

The reference anticipates the claimed subject matter.

\* Applicant is advised that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources. Should you receive inquiries about the use of the Office's PAIR system, applicants may be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is 571-272-0964. The examiner can normally be reached on 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on 571-272-0974. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**MICHELE FLOOD**  
**PATENT EXAMINER**

MCF

November 23, 2004